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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,865	07/28/2006	Victor Higgs	NAN165 US (8037)	4772

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EXAMINER	
AKANBI, ISIAKA O	

ART UNIT	PAPER NUMBER
2886	

MAIL DATE	DELIVERY MODE
02/19/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/549,865	**Applicant(s)** HIGGS, VICTOR	
	Examiner ISIAKA O. AKANBI	**Art Unit** 2886	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-3 and 5-19*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/TARIFUR R CHOWDHURY/
Supervisory Patent Examiner, Art Unit 2886

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments and the decoration, see page 7-12 have been fully considered but are not persuasive.

For the purpose of clarity and consistency, in the final rejection the examiner has obtained the paragraph numbers from the corresponding US publication (2004/0106217), which is consistent with the manner in which Non-final office action date May 27, 2008 paragraph were cited.

In response to Applicant's arguments that the cited reference Higgs does not disclose or even suggest or discuss a desire or need for or wheteher the laser could possibly heat the wafer sufficiently to " anneal the wafer or "a heating step to the semiconductor to diffuse contaminant from the particle into the semiconductor material". It is respectively pointed out to applicant that by applicant's own account (page 8, lines 13-14) Higgs excite the wafer/semiconductor to produced photoluminescence, which inherently anneal the wafer/semiconductor. Additionally, it is respectfully pointed out to applicant that it has been held that the absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus/device because the limitations at issue were found to be inherent in the prior art reference. In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971).

Further, In response to Applicant's arguments that Higgs does not disclose both "annealing", and "after annealing ... exposing the surface ... to at least one high intensity beam of light" or "collecting photoluminescence twice, once before and once after the "heating step to the semiconductor to diffuse contaminant from the particle into the semiconductor material". It is respectfully pointed out to applicants that this arguments is not persuasive as Higgs clearly disclose in (pars. 000072-0072) that after laser excitation (the process of annealing (excited using laser excitation (to increase the energy (i.e. heat or power of semiconductor)(Annealing = a heat treatment that alters the microstructure of a material (i.e. semiconductor such as glass) causing changes in properties such as strength and hardness) and contaminated, and then/after the levels of contamination is confirmed, detected or determined for different images, inspection at an increase PL intensity is performed, and thus meet the limitations such as after annealing the semiconductor structure (excited using laser excitation (to increase the energy (i.e. heat or power of semiconductor), exposing the surface of the semiconductor structure in the vicinity of a surface particulate to at least one high-intensity beam of light from a suitable light source.

In response to Applicant's arguments that (i) a prima facie case has not been made, (ii) neither cited references disclose a "means to heat the sample under test associated with the support to diffuse contamination from a particulate into a semiconductor structure of the sample under test" or "heating means to heat the sample in situ, allowing a photoluminescence response to be measured before and after heating", as recited in claims 14, 15, 16, 17. It is respectfully pointed out to applicant that by applicant's own account the rejection was made as 103, and the examiner recognize that these limitations was not taught by Higgs but used Maris/Noguchi to find these limitations.

Further, cited reference Higgs is reasonably pertinent to the particular problem contamination with which the application was concerned [pars. 0005, 0016-17], therefore, it would have been at least obvious to one having ordinary skill in the art at the time of invention to modify Higgs by means to heat the sample in situ for the purpose of controlling the temperature of the sample with accuracy. Additionally, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). As such, the argument/remarks for request for reconsideration does not appear to place the application in condition for allowance.